IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2609 OF 1992

Kalina Bhaktha Samaj, a Society registered under the Societies Registration Act, 1860 and having its registered office at Block No. B-41/161, Sunder Nagar, Santa Cruz (East), Mumbai - 400 098. ..Petitioners.

V/s.

1) M.K. Pandey, Director of Income Tax (Exemptions), Mumbai having office at Mittal Court, A-wing, Nariman Point, Mumbai - 400 021.

2) Union of India ..Respondents.

Mr.Vishal Kanade i/b. Shiralkar & Co. for petitioners.

Mr.B.M.Chatterjee with Ms.P.P.Bhosale and P.S.Sahadevan for respondents.

CORAM : F.I.REBELLO AND J.P.DEVADHAR, JJ.

DATED : 11TH SEPTEMBER, 2007.

JUDGMENT (PER F.I. REBELLO, J.)

Petitioners herein filed an application for approval by the first respondent under section 85G(5) on 30th March, 1992. The first respondent by letter dated 23rd April, 1992 sought particulars as to the income and expenditure account which were furnished under the cover of letter dated 11/5/1992. The first respondent by his letter dated 14/5/1992 pointed out

that according to him, the petitioner was carrying on religious activities which were considerable and that the funds kept for such activities were also relatively substantial. The first respondent thereafter relying on the Judgment of the Calcutta High Court in **C.I.T. V/s. Upper Ganges Sugar Co. Ltd.** reported in **154 I.T.R. 308** and considering the Explanation-3 below section 80 G(5A) of the Act, as it stood prima facie came to the conclusion that the petitioners were not eligible for certificate under section 80G.

The respondent No.1, therefore, called upon the petitioners to show cause as to why the certificate applied for should not be refused.

In response to the show cause notice, the petitioners contended that the objects of the petitioners were clearly charitable and not for religious purposes and the Judgment of the Calcutta High Court is not applicable to their case. It is also pointed out that the lectures arranged on the vedas and Upanishads by Sanskrit Pundits were for the benefits of the public at large and such discourses should be termed as service in the cause of education and not religious. After considering the contentions and after going through the memorandum of association and as the source of income was subscription from the members and

devotees and also the discourses were held on religious festival days and other festival occasions, the respondent No.1 held that the basic activities of the petitioner are religious in nature and as such the petitioner was not entitled to a certificate under section 80G. This order is the subject matter of the present petition.

2. At the hearing of this petition on behalf of the petitioners, learned counsel submitted that the order of the respondents suffers from an error of law apparent on the face of record and / or having mis-directed himself on law.

It is firstly submitted that even assuming that only Hindus are entitled to be members of the Samaj that by itself cannot be held against the petitioners. A group of individuals even though prosecuting the same faith can always come together to constitute a Trust or an Association for the purpose of carrying on a charitable activities. As such the finding by the respondent No.1 against the petitioners discloses an error, apparent on the face of record.

It is next submitted that there is a distinction between a spiritual discourse and a discourse of pure religious character. The respondent

No.1 has not addressed itself to this issue.

It is then submitted that the learned Tribunal has proceeded mainly on the Judgment of the Calcutta High Court in the case of C.I.T. V/s. Upper Ganges Sugar Co. Ltd. reported in 154 I.T.R. 308 which would not apply to the facts of the present case. Our attention is invited to the Judgment of this Court in the case of **Commissioner of Income Tax V/s. Rajneesh Foundation** reported in **280 I.T.R. 553 (Bom.)** as also the Judgment in case of **Suresh Sunderrao Nayak, a trustee of Sree Taram Trust V/s. M.K. Pandey, Director of Income Tax (Exemption)** reported in **288 I.T.R. 79 (Bom.)**.

3. Considering the said contentions, we may firstly consider some of the facts which are on record. The petitioner Society was registered on 30th September, 1964 under the Societies Registration Act, 1860 and under the Bombay Public Trust Act, 1950 on 29/2/1965. The Commissioner of Income Tax, Bombay City-IV issued a certificate to the effect that the petitioner is an institute established in India for charitable purpose in terms of section 80G(5) of the I.T. Act. On 21/2/1989 the Commissioner of Income Tax Bombay City-IV when the certificate came up for renewal by a letter drew the attention of the petitioners that

the "charitable purpose: did not include any purpose the whole or substantially the whole of which is of a religious nature. On 30th March, 1992 when again an application was made by the petitioners for renewal of an certificate under section 80-G of the I.T. Act, the Commissioner of Income Tax Bombay City by letter dated 23/4/1992 called for the information on the activities of the petitioners. The petitioners submitted the information by letter dated 11/5/1992. On 14/5/1992 the respondent No.1 informed the petitioners that they were prima facie carrying out religious activities and why the decision of the Judgment in Upper Ganges Sugar Co. Ltd. (supra) would not apply to them. The petitioners filed their reply on 20th May, 1992. On 8/6/1992 the impugned order was passed and certificate under section 80-G was denied.

With the reply dated 11/5/1992 the petitioners had furnished various details of the expenses for pandal erected for activities associated with religious events observed by the citizens professing the Hindu faith. The expenditure are in respect of those arrangements and also incidental expenses.

4. The respondent No.1 after considering the evidence which was placed has noted the total expenditure for religious purposes. The Calcutta High

Court in Upper Ganges Sugar Co. Ltd. (supra) was answering a reference in respect of an organization which was established to pursue charitable activities. The object of the Trust including the following object "to establish, maintain and/or to grant aid to public places of worship." The Court noted that the trustees had discretion to use the funds for any one or more or for all the purposes and in these circumstances, whether assessee was entitled to deduction of the amount of donations paid by them to the Vishwa Mangal Trust under section 80-G of the I.T. Act ? Under section 80G(5) the donations are liable to exemption if the funds are not expressed to be for the benefit of any particular religious community or caste and that the funds and the income or assets are not used for any purposes other than charitable. Explanation 3 as it then stood was also considered which read that it does not include any purposes, wholly or substantially the whole of which is of a religious nature. On facts, the Court found that the income could be used in terms of trust deed for religious purpose and as such, would not be entitled to the benefit. In Rajneesh Foundation (supra), the learned Division Bench of this Court on facts found that the objects of the Trust are charitable within the meaning of section 253 (of the Act). Similarly, in so far as Suresh Sunderrao Nayak (supra) is concerned, the question was once again on

facts that it could not be said that the I.T.O. was in error in coming to the conclusion that the Trust does not satisfy the conditions for grant of exemption under section 80-G of the Income Tax Act.

5. On the facts before us respondent No.1 has held that the funds were incurred for religious activities. Once this finding was there, it cannot be said that the order suffers from any error of law apparent on the face of the record. In our opinion, therefore, there is no merit in this petition.

However, we may clarify that it is always open to the petitioners, if so advised, to re-apply and if such an application is made, it may be considered afresh and the issue that the membership is related to only Hindus by itself, should not be a ground for rejecting the application filed, by the petitioners after other things establish that they carry on activities for charitable purposes.

6. Rule discharged with no order as to costs.

(F.I.REBELL0, J.)

(J.P.DEVADHAR, J.)